

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Robert Lonnell Smith, Jr.,

Case No. 2:23-cv-01183-CDS-DJA

Plaintiff

Order Dismissing Plaintiff's Amended
Complaint and Denying as Moot
Defendants' Motion to Dismiss

v.

Washoe County et al.,

Defendants

[ECF Nos. 44, 47]

10 Pro se plaintiff prisoner Robert Lonnell Smith, Jr., brings claims against defendants

11 Washoe County, Washoe County Sheriff Darin Balaam, Peter Sewll, Kester Andrew Barrett-

12 Venn, Darrin Rice, and Devonte German (collectively, defendants) under 42 U.S.C. § 1983

13 alleging violations of the Fourteenth Amendment based on conditions of confinement. Am.

14 compl., ECF No. 44. Smith's claims stem from his incarceration as a pretrial detainee at the

15 Washoe County Detention Facility. *Id.* Defendants move to dismiss. Mot. to dismiss, ECF No.

16 47. The motion is fully briefed. *See* Opp'n, ECF No. 61; Reply, ECF No. 62.

17 Defendants argue that Smith's claims are barred by claim and issue preclusion. *See*

18 generally ECF No. 47. However, I am unable to reach the merits of the motion. Smith's amended

19 complaint contains several references to an attached "declaration" of facts. *See* ECF No. 44 at 5,

20 10, 13. But a review of the amended complaint demonstrates that there is no "declaration" of facts

21 attached to or otherwise in the motion. Therefore, there are no facts provided in the motion to

22 allow me to determine if in fact Smith's claims are precluded. Although Smith includes the

23 "declaration" of facts in his original complaint, I am unable to reference it because an amended

24 complaint replaces the original complaint and the content of the original complaint is irrelevant.

25 *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989). Given that his

26 original complaint included this "declaration" of facts, I am inclined to believe that Smith's

1 omission of the declaration of facts in his amended complaint is a mere oversight. I thus sua
2 sponte dismiss Smith's amended complaint without prejudice and with limited leave to
3 amend—as explained in the conclusion of this order—so that he may re-file his complaint with
4 the declaration of facts. Defendants motion to dismiss is denied without prejudice as moot so it
5 may be refiled should Smith file a second amended complaint in accordance with this order.

Conclusion

IT IS THEREFORE ORDERED that Smith's amended complaint [ECF No. 44] is sua sponte DISMISSED without prejudice and with leave to amend. If Smith chooses to continue this litigation, he is directed to file a second amended complaint (SAC) no later than August 15, 2025. The SAC may not add additional claims or additional defendants. Should the defendants seek to file a motion to dismiss they must do so no later than two weeks after the SAC is filed.

12 IT IS FURTHER ORDERED that defendants' motion to dismiss [ECF No. 47] is
13 DENIED as moot. 

14 Dated: July 29, 2025

~~Cristina D. Silva
United States District Judge~~